

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JONATHAN DUBOIS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-19-1080-PRW
)	
CITY OF BLANCHARD, a municipality;)	
MATTHEW HAINES, in his individual)	
capacity; STACEY WHITE, in his)	
individual capacity; JOE BEILOUNY, in)	
his individual capacity; SEAN EATON, in)	
his individual capacity; and JOHN DOES)	
1-10,)	
)	
Defendants.)	

ORDER

Defendant City of Blanchard asks the Court to dismiss two claims brought against it by Plaintiff for failure to state a claim upon which relief can be granted (Dkt. 9). It argues, pursuant to Fed. R. Civ. P. 12(b)(6), that (1) Plaintiff’s *Burk* tort claim must be dismissed because he does not assert that he was an at-will employee and (2) Plaintiff’s punitive damages claim must be dismissed because such damages are not recoverable against a municipality.

Standard of Review

In reviewing a Fed. R. Civ. P. 12(b)(6) motion to dismiss, all well-pleaded allegations in the complaint must be accepted as true and viewed “in the light most

favorable to the plaintiff.”¹ While a complaint need not recite “detailed factual allegations,” “a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”² The pleaded facts must establish that the claim is plausible.³

***Burk* Tort Claim**

Defendant City contends that Plaintiff’s *Burk* tort claim must be dismissed because Plaintiff’s claim that he had a property interest in his continued employment precludes him from claiming that he was an at-will employee, and only at-will employees can pursue a *Burk* claim.⁴ Plaintiff responds that he pleaded that he had a property interest in his continued employment *and also* that he was an at-will employee because there is a question of fact as to the status of his employment.⁵ Moreover, asserts Plaintiff, the Federal Rules of Civil Procedure permit alternative pleading at this stage of litigation since discovery has not yet occurred.⁶

The Court agrees with Plaintiff that such alternative pleading is permitted at this stage of litigation,⁷ and taking his allegations as true and viewed in the light most favorable

¹ *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, (1215 (10th Cir. 2007) (quoting *David v. City & County of Denver*, 101 F.3d 1344, 1352 (10th Cir. 1996)).

² *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks and citations omitted) (alteration in original).

³ *Id.*

⁴ Mot. for Partial Dismissal of Def. City of Blanchard (Dkt. 9) at 4.

⁵ Pl.’s Resp. to Def. City of Blanchard’s Mot. for Partial Dismissal (Dkt. 16) at 3.

⁶ *Id.* at 6–7.

⁷ *See* Fed. R. Civ. P. 8(d).

to Plaintiff, he has stated the at-will employee element of a *Burk* tort claim. Defendant City's request to dismiss this claim is accordingly denied.


Punitive Damages

Defendant City next argues that Plaintiff's punitive damages claim must be dismissed because such damages are not recoverable against a municipality.⁸ Plaintiff concedes this point,⁹ so his claim for punitive damages against Defendant City is dismissed with prejudice.

Conclusion

The motion (Dkt. 9) is thus **GRANTED IN PART AND DENIED IN PART**. Defendant City's motion to dismiss Plaintiff's *Burk* tort claim is **DENIED**, and its motion to dismiss Plaintiff's punitive damages claim against Defendant City only is **GRANTED** and **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED this 15th day of June, 2020.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

⁸ Mot. for Partial Dismissal of Def. City of Blanchard (Dkt. 9) at 5–6.

⁹ Pl.'s Resp. to Def. City of Blanchard's Mot. for Partial Dismissal (Dkt. 16) at 8.